

EXHIBIT 9-G

(SAMPLE) INTERLOCAL AGREEMENT (SUB-RECIPIENT AGREEMENT) *For A Project with A Water/Sewer District As Sub-recipient*

- Interlocal agreements related to CDBG projects need to be reviewed and approved by MDOC/CDBG prior to signing.
- The clauses required by HUD regulations (24 CFR 570.503) are noted with an asterisk (*). Copies of the HUD requirements are available upon request from the Department of Commerce, CDBG Program.
- See Exhibit 9-I for an example of an interlocal agreement (sub-recipient agreement) between a local government and a local non-profit organization that is a subrecipient of CDBG grant funds.

THIS CONTRACT is entered into by (Insert Name of County) County, herein referred to as "the County," and the (Insert Name of District) District, herein referred to as "the District."

WITNESSETH THAT:

WHEREAS, the County is the recipient of a Community Development Block Grant (CDBG) to (...Describe the project...) owned and operated by the District; and

WHEREAS, this Contract between the County and the District will enable them to enhance cooperation in implementing the County's CDBG award to accomplish the above-described project; and

WHEREAS, the County, in its capacity as a CDBG grantee, has determined that the District can better supervise the design and construction phases of the (water and/or sewer) system; and

WHEREAS, the Montana Department of Commerce has required the County to enter into a contract with the District specifying the terms and conditions of the County's delegation of certain CDBG responsibilities to the District; and

WHEREAS, both parties to this Contract understand that neither local government involved herein has in any way, expressly or implied, abrogated any of its individual powers, and that this Contract does not create any new organization or legal entity.

NOW, THEREFORE, THE COUNTY AND THE DISTRICT MUTUALLY AGREE AS FOLLOWS:

I. Responsibilities Delegated to the District

- A. The District will, subject to prior approval by the Board of County Commissioners, retain the services of a consulting engineering firm to design and supervise the construction of the project.
- B. The District will be responsible for all facets of the design and construction phases of the project, including the following:
 - 1. Design engineering;
 - 2. Construction engineering;
 - 3. Except as provided by paragraph IV. Administration below, compliance with all applicable state and federal requirements contained in the Certifications for

Application submitted to the Montana Department of Commerce with the County's application for CDBG assistance, dated _____, 200____;

4. Except as provided by paragraph IV. Administration below, compliance with all other state and federal requirements as described in the Montana Community Development Block Grant Program Grant Administration Manual;
 5. Preparation of construction bid documents; and
 6. Supervision of the bid process, the awarding of construction contracts, and construction of the project. The selection of the project contractor will be subject to the ratification of the County Board of Commissioners and bid solicitation documents will reflect this requirement.
- C. The District and its consulting engineer will receive, review, and approve all requests for payment for the items contained in paragraph B, above, and prepare and submit such requests to the County Board of Commissioners in a timely fashion in accordance with established procedures.
- D. (*) During the term of this Contract, the District will maintain reasonable records of its performance hereunder in a manner consistent with generally accepted accounting principles. The District will allow the County and the Department of Commerce and their authorized representative's access to these records at any time during normal business hours. At the request of the County, the District will submit to the County, in the format prescribed by the County, status reports on its performance under this Contract.
- E. The District will provide documentation that the local share of the project that exceeds CDBG funds may be accessed by the County for the project no later than the time of construction bid award. *[...Include this clause only where the county will pay all invoices for the project...]*

II. Payment of Design and Construction Costs Incurred by the District

In consideration of the District's acceptance of the responsibilities described in paragraph I, above, the County agrees to the following:

- A. Upon receipt of a valid claim for payment from the District for allowable project costs as specified in the County's Grant Agreement with the Montana Department of Commerce, a copy of which is appended as Attachment A of this Contract, and which by this reference is made a part hereof, the County will request the required amount of CDBG funds from the Department and upon receipt of these funds, the County will honor the District's claim and pay the engineer or contractor accordingly.
- B. Each payment for engineering and construction costs will be drawn from CDBG and other sources (if applicable) in amounts that correspond to the respective invoice for such work and shall be representative of the budget specified in Attachment B of Attachment A.
- C. The County will deduct a retainage from each payment request equal to five percent (5%) of the request, submitted by the District for construction costs incurred by the project contractor and hold this retainage until construction is completed, the engineer approves final payment, and the project is accepted, all in accordance with the conditions of the construction contract.

- D. The County will also withhold one percent of the amount of any claim submitted by the contractor and will forward this amount to the Montana Department of Revenue pursuant to section 15-50-206(2), MCA.
- E. The County may refuse to pay any claim which it deems not valid under the terms of the CDBG Grant Agreement (Attachment A). (Note: HUD regulations require that any agreement between a grant recipient and a subrecipient, such as a water or sewer district, include a "Statement of Work" which includes a description of the work to be performed, a schedule for completing the work, and a budget. These items are standard components of any CDBG grant agreement which is referred to here as an attachment.)

III. Duration of the Contract

- A. This Contract takes effect when the following conditions are satisfied:
 - 1. The Montana Department of Commerce, and County Board of Commissioners have executed the CDBG Grant Agreement;
 - 2. The Montana Department of Commerce has approved the County's "Request for Release of Funds and Certification";
 - 3. The County's county attorney and the attorney for the District have approved this Contract as to form and content; and
 - 4. The County Board of Commissioners and the District's governing body have each reviewed this Contract and agreed fully to its terms and conditions.
- B. This Contract will terminate 90 days after the project engineer files a certificate of completion of the project with the Montana Department of Environmental Quality or the Montana Department of Commerce closes out the CDBG grant with the County, whichever occurs later.

IV. Administration

- A. For purposes of implementing the joint undertaking established by this Contract, the County's Board of Commissioners and the District's Board of Directors hereby agree to form a project coordinating committee consisting of the County's CDBG contract liaison, the project engineer, and a designated representative of the district to meet on a regular basis during the term of the CDBG project to provide for the efficient and effective implementation of this Contract and the activities contained herein. The life of the project coordinating committee will be concurrent with the term of this Contract.
- B. (*) The District will comply with the federal administrative requirements contained in 24 Code of Federal Regulations (CFR), section 570.502, as applicable.
- C. (*) The District will carry out each activity under this Contract in compliance with all federal laws and regulations described in 24 CFR sections 570.600 through 570.612 (Subpart K), except that:
 - 1. The District does not assume the County's environmental responsibilities described at 24 CFR section 570.604, and
 - 2. The District does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 58.

V. (*) Disposition of Real Property or Equipment Acquired

- A. The primary purpose of this Contract is to allow the County to delegate responsibility for the design and construction of the District's project to the District and to define the procedures by which the County will disburse CDBG funds to pay the costs incurred as a result of these activities. The District's facilities will be constructed or improved as described in the Grant Agreement (Attachment A) and the District will continue to own and operate those facilities subject to the limitations contained in subparagraph B.
- B. Upon the expiration of this Contract the District will transfer to the County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. With respect to any real property or equipment under the District's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 the District will either:
 - 1. use the property to meet one of the national objectives contained in 24 CFR section 570.901 for five years after expiration of the agreement (or for such longer period of time as is determined to be appropriate by the County) or;
 - 2. dispose of the property in a manner that results in the County's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph A. of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR 570.504 (Program Income), 24 CFR Part 85.25, 24 CFR 570.504 (Program Income), Part 85.31 (Real Property), and Part 85.32 (Equipment).

VI. Indemnification

The District waives any and all claims and recourse against the County, including the right of contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to the District's performance of this Contract except claims arising from the concurrent or sole negligence of the County or its officers, agents, or employees. The District will indemnify, hold harmless, and defend the County against any and all claims, demands, damages, costs, expenses, or liability arising out of the District's performance of this Contract except for liability arising out of the concurrent or sole negligence of the County or its officers, agents, or employees.

VII. (*) Suspension and Termination

In accordance with 24 CFR 85.43, the County may suspend or terminate this Contract if the District materially fails to comply with any term of the County's CDBG grant agreement with the Department of Commerce. In addition the County may terminate this Contract for convenience in accordance with 24 CFR 85.44.

This Contract has been approved by the County's Board of Commissioners and the District's Board of Directors.

(Name of County) Commissioners

Commission Chair

Date: _____

Commissioner

Date: _____

Commissioner

Date: _____

ATTEST:

Clerk and Recorder

APPROVED AS TO FORM:

County Attorney

(Name of) District

Chairperson

Date: _____

ATTEST:

Secretary/Treasurer

APPROVED AS TO FORM:

Attorney